Ī	Case 3:10-cv-00078-RCJ-WGC Document 72 Filed 04/30/12 Page 1 of 3
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9	UNITED STATES DISTRICT COURT
10	DISTRICT OF NEVADA
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12	DEREK ANTHONY COSTANTINO,) 3:10-cv-00078-HDM-WGC
13	Plaintiff,)
14	vs.) ORDER ADOPTING REPORT AND) RECOMMENDATION IN PART,
15 16	STATE OF NEVADA, et al.,) REJECTING IN PART) Defendants.)
17)
18	Before the court is the report and recommendation of the
19	United States Magistrate Judge (#61), filed on March 6, 2012. In
20	the report and recommendation, the magistrate judge recommends that
21	this court enter an order dismissing defendant Bryant ("Bryant")
22	and denying the plaintiff's motion for a preliminary injunction
23	(#48). Plaintiff objected to the dismissal of Bryant (#66),
24	defendants responded (#70) and accepted service on behalf of Bryant
25	(#69). Defendants also requested leave to amend their answer.
26	(#70). For the reasons set forth below, and good cause appearing,
27	the magistrate judge's report and recommendation is accepted and
28	adopted in part and rejected in part.
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1 To succeed in obtaining a preliminary injunction, the plaintiff must establish: 1) he is likely to succeed on the merits; 3 2) he is likely to suffer irreparable harm in the absence of preliminary relief; 3) the balance of equities tips in his favor; 4 5 and 4) an injunction is in the public interest. Winter v. Natural Ress. Def. Council, 555 U.S. 7, 20 (2008). Under the Ninth Circuit 6 7 approach "'[s]erious questions going to the merits' and a hardship 8 balance that tips sharply toward the plaintiff can support issuance of an injunction, assuming the other two elements of the Winter test are also met." Alliance for the Wild Rockies v. Cottrell, 632 10 11 F.3d 1127, 1131-32 (9th Cir. 2011). Furthermore, where "a party 12 seeks mandatory preliminary relief that goes well beyond 13 maintaining the status quo pendente lite, courts should be 14 extremely cautious about issuing a preliminary injunction." Martin v. Int'l Olympic Comm., 740 F.2d 670, 675 (9th Cir. 1984)(citation 15 16 omitted). Finally, the court must consider the additional 17 requirements set forth in the Prison Litigation Reform Act 18 ("PLRA"). 18 U.S.C. § 3626. In particular: 19

Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct the harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the principles of comity set out in paragraph (1) (B) in tailoring any preliminary relief.

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§ 3626(a)(2). Therefore, section 3626(a)(2) limits the power of the court to grant preliminary injunctive relief to inmates. See Gilmore v. People of State of Cal., 220 F.3d 987, 998 (9th Cir. 2000).

With these standards in mind, the court has considered the

Case 3:10-cv-00078-RCJ-WGC Document 72 Filed 04/30/12 Page 3 of 3

pleadings and memoranda of the parties and other relevant matters of record. It has made a review and determination in accordance with the requirements of 28 U.S.C. § 636 and applicable case law. Based on this review, and good cause appearing, the court hereby accepts and adopts the report and recommendation of the magistrate judge in part. Accordingly:

The court rejects the magistrate judge's recommendation that Defendant Bryant be dismissed from this action. Service was accepted on behalf of Bryant after the report and recommendation was filed. Therefore, Bryant remains a defendant in this action.

The court accepts and adopts the magistrate judge's recommendation that plaintiff's motion for a preliminary injunction and temporary restraining order be denied. The plaintiff has not carried his burden in establishing the requirements for a preliminary injunction, and the record is not sufficiently developed in order to grant plaintiff's motion at this time. Therefore, the plaintiff's motion for a preliminary injunction and temporary restraining order (#48) is DENIED.

Plaintiff's motion is dismissed without prejudice to renew.

Defendants shall have until May 27, 2012 to file an amended answer.

IT IS SO ORDERED.

DATED: This 30th day of April, 2012.

Howard DM: Killer

UNITED STATES DISTRICT JUDGE